

EXHIBIT A

Declaration of Stephen Fairfax

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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 SWITCH, LTD.,
9 a Nevada limited liability company,

10 Plaintiff,

11 vs.

12 STEPHEN FAIRFAX; MTECHNOLOGY,
13 INC.; DOES 1 through 10; and ROE ENTITIES
14 11 through 20, inclusive,

15 Defendants.

Case No.: 2:17-cv-02651-GMN-VCF

**DECLARATION OF STEPHEN
FAIRFAX IN RESPONSE TO
PLAINTIFF'S MOTION TO COMPEL
THIRD-PARTY JONES LANG
LASALLE TO PROVIDE REQUESTED
DOCUMENTS**

16 I, STEPHEN FAIRFAX, declare:

17 1. I am over 18 years of age and have never been convicted of a crime involving fraud or
18 dishonesty. I have first-hand knowledge of the facts set forth herein, and if called as a witness could
19 and would testify competently thereto.

20 2. Individually, I am a Defendant in this matter.

21 3. I am the President of MTechnology, Inc. ("MTech"), another Defendant in this suit.

22 4. I make this declaration in my individual capacity and on behalf of MTech to clarify
23 and correct statements made in Plaintiff's Motion to Compel Third Party Jones Lang LaSalle ("JLL").

24 5. I first toured a data center in 1973. I have performed calculations of data center
25 reliability professionally since 1994.

26 6. MTech specializes in performing a specific engineering calculation of the reliability of
27 data center power and cooling systems. Our calculations are conducted in performance of a national

1 standard, standard IEEE 3006.7-2013 – *IEEE Recommended Practice for Determining the Reliability of 7X24*
2 *Continuous Power Systems in Industrial and Commercial Facilities*.

3 7. I do not and have never designed data centers. Given that many of MTech's clients
4 are in the business of designing data centers, it would make no sense for MTech to compete with its
5 clients.

6 8. In Plaintiff's Motion to Compel JLL, in Exhibit 1 page 3 at 14, also page 3 at 11-13,
7 Switch alleges that:

8 JLL's advertising for the Phoenix, Arizona data center includes a quote from Fairfax
9 regarding the center's cooling and power generation platforms, which potentially include
Switch's trade secrets. **Exhibit 7** at 3.

10 9. In Exhibit 7 at page 3, the only quote attributed to Fairfax, as President of
11 MTechnology is "One of the most reliable cooling & power generation platforms ever studied."

12 10. I did not say or write these words. I do not make such sweeping statements.

13 11. MTech did not perform an analysis of the Aligned Phoenix data center. We only
14 analyzed Aligned's data center in Plano, TX.

15 12. Based on my tours of Aligned's Phoenix facility, it incorporates substantial design
16 changes compared to Plano that in my expert opinion would almost certainly have material effects on
17 the facility's reliability. Therefore, I could not opine upon the reliability of Aligned's Phoenix facility.

18 13. The quote attributed to me, even if I did make it (which I did not), could not
19 reasonably be used to infer that MTechnology appropriated Switch's trade secrets or gave them to
20 Aligned. It would be a statement of MTech's experience in performing these calculations, and/or a
21 placing the result of our engineering calculation in context, nothing more.

22 14. In 2011, MTech was retained by eBay to evaluate Switch's Las Vegas "NAP" facility.
23 Switch gave me a tour of the Las Vegas "Switch NAP" facility in 2011.

24 15. When MTech was attempting to evaluate Switch's data center for eBay, Switch refused
25 the opportunity to have MTech perform a calculation of the reliability of their Las Vegas "Switch
26 NAP" data center. MTech's proposal to eBay for analysis of the Switch NAP data center was for a
27 fee not to exceed \$135,500. eBay accepted this proposal and issued a Purchase Order. All costs of

1 the calculation would have been paid by eBay. Due to Switch's refusal, I would not and could not
2 make any statements regarding the reliability of Switch's data center.

3 16. When MTech visited Switch in 2011, Switch refused to provide any documents of any
4 kind, citing their beliefs that MTech would steal their trade secrets and use them to build data centers.

5 17. MTech at the time had 6 employees, none of them professional engineers. We were
6 incapable of designing data centers that would cost tens or hundreds of millions of dollars.

7 18. By refusing to allow the calculation, Switch lost the opportunity to make meaningful
8 comparisons of the calculated reliability of their facility with competing facilities.

9 19. In the Motion to Compel, Switch continues to allege that I visited Switch facilities in
10 2015. In their responses to our discovery requests dated, Switch could produce no evidence of that
11 alleged visit.

12 20. I did not visit any Switch facility in 2015.

13 21. In the motion Switch writes that:

14 "JLL asserts that Request Nos. 2-7 in the subpoena "appear to be for an improper
15 purpose and [are] improper under Rule 45 and 26." Exhibit 9. JLL does not clarify
16 what Switch's allegedly improper purpose is, though it seems JLL is concerned that
Switch is only seeking information that will enable Switch to sue JLL in a subsequent
case. Exhibit 10."¹

17 22. Switch's motion goes on to state that "Switch is not merely using the current action to
18 attempt to build a future case against JLL."²

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26 ¹ See *id.*, page 8 at 16-20.

27 ² See *id.*, at 25-26.

23. During a meeting in Boston on August 28, 2018³ I met with Sam Castor and Anne-Marie Birk, both of whom are in-house counsel for Switch.

24. Mr. Castor and/or Ms. Birk informed me that MTech and I were not Switch's primary targets and requested assistance from me in a dispute Switch was planning on instituting against Aligned Data Centers, LLC.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/3/2020.

DocuSigned by:

Stephen Fairfax

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Stephen Fairfax

³ See Declaration of Stephen Fairfax in Support of Defendants' Reply in Support of Request for a Pretrial Conference.